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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

Before The Honorable Joseph C. Spero, Magistrate Judge

CORNERSTONE STAFFING SOLUTIONS, INC.)
)
Plaintiff,)
)
VS.) NO. 12-cv-01527 JCS
)
JAMES,)
)
Defendant.)
)

SAN FRANCISCO, CALIFORNIA
FRIDAY APRIL 25, 2014

TRANSCRIPT OF PROCEEDINGS OF THE OFFICIAL ELECTRONIC SOUND RECORDING

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Friday, April 25, 2014 4:33 p.m.

P R O C E E D I N G S

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THE CLERK: Calling case number C12-1527; Cornerstone Staffing Solutions v. James.

And counsel, please state your appearances.

MR. HIX: Good afternoon, your Honor. Clayton Hix, H-i-x, for Cornerstone, et al.

MR. ARENA: Good morning, your Honor. Paul Arenas representing Larry James, Deploy Hr, and Batton, Inc.

MR. MARRON: Your Honor, Paul Marron for the same defendants.

THE COURT: Okay. It's all worked out; right? No? Pretty much.

UNIDENTIFIED SPEAKER: Some yes; some no.

THE COURT: Pretty much.

Well, I have in my hand the docket number 293, which was your latest update of the meet and confer letters. Which one of those items listed in there do we need to talk about?

UNIDENTIFIED SPEAKER: Well, your Honor, I think we need to talk about all of them, I think.

THE COURT: Okay. So --

UNIDENTIFIED SPEAKER: Unfortunately.

THE COURT: -- let me start with you. You understand how this looks from this side of the bench? You understand that you've all lost credibility with me; you've all lost credibility with Judge Seeborg; and the more you do this, the more you lose credibility with both of us. You understand that?

UNIDENTIFIED SPEAKER: We understand, your Honor.

THE COURT: You understand that's number one.

Number two is that credibility is key to going forward with this case. Key. Because we actually have to make judgment calls along the way. I do on the discovery; more obvious judgement calls. More subtle judgment calls, Judge Seeborg makes.

In making those judgment calls, we rely on the lawyers. When the lawyers lose credibility with us, they lose the ability to persuade us and you hurt your clients by this fashion.

So for example, there's nothing key to the case in this pile of -- I don't know what it is -- about 300, 400 pages? There's nothing key to anyone's case in this pile. Nothing. Zero.

There are nuances; there may be some mildly interesting stuff; there may be stuff that may lead to some interesting stuff. There's nothing that's central to the case.

That you would devote this kind of energy to hurting your credibility in the pursuit of this is just bizarre.

So with that predicate, let's go through and I'll tell you what my rulings are.

Number one, Larry James' discovery issue; A, examination of Luke Goetz. Denied. It's outside the agreed upon scope of the deposition for Mr. Goetz.

Number two, issues raised in Mr. Anderson's -- Ms. Anderson's depo. This has to do with net worth. Denied. Punitive damages are not properly sought against Ms. Anderson. But in any event, you asked for things that are very old; 2002, 2003. Those are not the current net worth.

Subdivision C. Missing Cornerstone financial documents. What exactly is still missing, if anything?

UNIDENTIFIED SPEAKER: Your Honor, I'll speak to that, your Honor. Before --

THE COURT: Why do you get to pick?

UNIDENTIFIED SPEAKER: Yeah, I don't understand how he could possibly speak to that, your Honor.

THE COURT: See this is -- you people are both ridiculous. You do understand how this looks? How can you expect us to take you seriously on the important issues in the case when you both take ridiculous positions on the less important issues in this case. It is astonishing. You obviously need a lesson in how to persuade a Federal Judge. Proceed.

UNIDENTIFIED SPEAKER: Your Honor, we want -- gone through it. We did get some late productions in March.

THE COURT: Yes.

UNIDENTIFIED SPEAKER: And then --

THE COURT: Yes.

UNIDENTIFIED SPEAKER: -- we've looked at those and they were still short.

THE COURT: Of what? What exactly is missing?

UNIDENTIFIED SPEAKER: Referring to the missing documents chart, which is attached to docket 276.

THE COURT: Just give me -- tell me the exact item that you think you're missing.

UNIDENTIFIED SPEAKER: We're missing the 2009 January through December profit loss statements by Branch.

THE COURT: 2009, January through December profit and loss statements by Branch. Uh-huh. Anything else?

UNIDENTIFIED SPEAKER: 2013, January to the present profit loss statements by Branch.

THE COURT: Uh-huh. 2013 -- yes -- to present. 2013 -- to the end of the year, you mean; January to December?

UNIDENTIFIED SPEAKER: Yes.

THE COURT: Uh-huh.

UNIDENTIFIED SPEAKER: Detailed general ledger 2003 for the whole year. We've actually -- strike that, your Honor. We received December of 2003, but none of the others.

THE COURT: Detailed general ledger for the -- for January through December 2003. Okay. That it?

UNIDENTIFIED SPEAKER: We're missing Ms. Bock (phonetic) folder on Larry's automobile. They asserted it doesn't exist. We have witnesses that say it did exist when Mr. James left.

THE COURT: Well, so what? You don't get -- you don't -- you don't -- I'm not going to order to compel anything that they say doesn't exist. I'm not.

UNIDENTIFIED SPEAKER: We're missing invoices created by Cornerstone and they were created by Rebecca Sheer (phonetic) and Mel Bock (phonetic) to all of the defendant entities; all years needed.

And in fairness, your Honor; on April 7th, they made available 72 boxes of APAR documents, which we think some of this may be in there.

THE COURT: No, no. Okay. That I'm not allowing. So all of this may be in there?

UNIDENTIFIED SPEAKER: Well, your Honor, they made it available on April 7th. We haven't had the opportunity to look at it.

THE COURT: I'm sorry.

UNIDENTIFIED SPEAKER: They dumped it.

THE COURT: What's today? It's -- it's April 25th.

UNIDENTIFIED SPEAKER: It's -- it's actually being scanned right now. They -- what they did was they presented 72 boxes in front of a storage unit. We -- they couldn't go through it there. It was 90 degrees out there. We had no conference room to go through the materials. We were left no choice but to take this to Copy Service Repo; one that they agreed upon. We're not -- according to the agreement with them, we're not allowed to look at the originals. They're in Repo's position. They're being scanned. They're going to be returned back to them. But that whole project is being divided between two repo offices in Oakland and San Francisco. We have not had the opportunity to look at the -- many of those documents as of this date.

THE COURT: When is the trial in this case?

UNIDENTIFIED SPEAKER: May 27th, your Honor. It's been a long haul. This whole case is about financial documents primarily. Well, we're trying to get a simple financial documents and we can't seem to -- they would piecemeal produce those. They would identify base numbers. They were not the accurate base numbers. They --

THE COURT: Listen, I think your positions have been ridiculous as often as theirs. I'm not going to listen to any of this who shot John stuff. So that you're clearly incorrect on some things and clearly right on other things. So I'm not going to listen to this "it's all their fault" stuff.

But what amuses me is that it is the end of April. You -- your pretrial -- your trial stuff is probably due already. You're already preparing for trial and you're arguing about a motion to compel about things that might be in the documents you got produced already. I don't know what you expect me to do.

I guarantee you if they say they're already produced and you don't have evidence that they aren't already produced, I'm not ordering them produced.

UNIDENTIFIED SPEAKER: Well, we -- these things were -- there was no reason, your Honor, that they didn't produce and make these documents available to us --

THE COURT: I don't care about that.

UNIDENTIFIED SPEAKER: -- when they were requested.

THE COURT: That's -- nothing is before me on that. They -- you want to talk to Judge Seeborg about -- say I'm not ready for trial; you want to talk to Judge Seeborg about dismissing their case; or whatever you want to talk to Judge Seeborg about, you go right ahead.

I've got a motion to compel. I compel things that I think haven't been produced that I think exist.

So in any event, what else? Invoices?

UNIDENTIFIED SPEAKER: All right. Yeah, the invoices we don't have. Moving over to attachment eight and missing documents. We don't have accounts receivable; cash receipts; reports; and deposits; backup for deposits; payments posted in Avionte, including electronic deposits from January 2010 to December of 2010.

THE COURT: Payments posted in what?

UNIDENTIFIED SPEAKER: January 2010.

THE COURT: Posted in -- what is the -- posted --

UNIDENTIFIED SPEAKER: Avionte is a payroll services software.

THE COURT: A-v-i-a-n-t-e?

UNIDENTIFIED SPEAKER: A-v-i-o-n-t-e.

THE COURT: I-o-n-t-e. And payments posted in Avionte for what years?

UNIDENTIFIED SPEAKER: January, 2010 through December, 2010.

THE COURT: Uh-huh.

UNIDENTIFIED SPEAKER: We're still missing deposit backup for May, 2011 through December, 2012. These are --

THE COURT: That it?

UNIDENTIFIED SPEAKER: Oh, no. We're missing credit memos to tech for periods of January through September, 2010; December, 2010; March, 2011 through May, 2011; and June, 2011 invoices.

THE COURT: Uh-huh.

UNIDENTIFIED SPEAKER: We're missing credit memos to Hanbon-PA; Hand -- for the periods of January, 2010 through September 30th, 2010; credit memos for Batton for the October 24th, 2010 through December 31st, 2010; March 13th, 2011 through April 24th, 2011; May 22nd, 2011; and June --

through June 5th, 2011.

We're missing invoices; credit memos for Hand Connecticut for all periods of time. We're missing -- we're missing dated documents for accounts payable; paid bills showing bills paid to Cornerstone workers; compensation carriers; worker's compensation brokers; GMAC; New York Life; Avionte; Dunn & Bradstreet; Career Builder; Hot Jobs; Monster.com -- sorry. Am I going too fast? Micronation --

THE COURT: Way too fast. But really, this is the key documents you need at the end of the case?

UNIDENTIFIED SPEAKER: Well, these documents -- the problem with these documents, your Honor --

THE COURT: Every bill to Dunn & Bradstreet or whatever it is.

UNIDENTIFIED SPEAKER: They're accusing Mr. James --

THE COURT: I know exactly what they're accusing, but the one bill to Dunn & Bradstreet will make the slightest bit of difference in showing whether or not there was any fraud here?

UNIDENTIFIED SPEAKER: There was funds going in; funds going out.

THE COURT: There's always --

UNIDENTIFIED SPEAKER: Sometimes --

THE COURT: -- funds going in and funds going out. That doesn't mean -- will you just stop? When I'm talking you listen.

You have no perspective. That's your problem. Every single little tiny thing is not going to help you show that either there was no fraud by your -- or there was mismanagement by the other side and that's the problem. Not every little piece of paper.

UNIDENTIFIED SPEAKER: Your Honor?

THE COURT: No perspective.

UNIDENTIFIED SPEAKER: May I be heard on that point?

THE COURT: No, you won't. No. I won't hear on that. You people have no perspective on how to prove up a financial case. None.

But in any event, what -- are there any more documents?

UNIDENTIFIED SPEAKER: Yes.

THE COURT: How many more are there that you're going to list?

UNIDENTIFIED SPEAKER: I have two more, your Honor.

THE COURT: Okay. Go ahead.

UNIDENTIFIED SPEAKER: The annual contracts for these entities I was listing. And we're still missing the payments to and from -- Monster.com; Micronation; and the contracts on those.

THE COURT: Okay. This is under missing Cornerstone financials. Okay. What's your response on those?

UNIDENTIFIED SPEAKER: With respect to every single item he listed with one exception, we have produced everything in our possession that we have.

THE COURT: What's the exception?

UNIDENTIFIED SPEAKER: The 2013 financials to which there's a dispute.

THE COURT: Okay. As to 2013 financials, what do you mean there's a dispute?

UNIDENTIFIED SPEAKER: Well, we can contend that since Judge Seeborg's ruling, which -- well, actually, no.

They're not relevant. They're claiming that these 20 -- he was fired in March of 2012. They're claiming that the 2013 records, which are after he was terminated, will show that Cornerstone was profitable despite his alleged theft.

And I'm saying that's not a legal defense to say that you stole, but it was okay because the company was still profitable.

THE COURT: Well, no. But it may -- it may show that the company wasn't in -- suffering from the kind of losses that would -- you would expect to con -- no, I think that's wrong.

So the ruling on this -- on C is that it's denied, expect for you should produce all the 2013 financials.

All right. Okay. D is denied. There's no evidence there's any documents that haven't been produced. D is granted. Post-communications may bear on Ms. Anderson's credibility.

UNIDENTIFIED SPEAKER: I'm sorry. I'm lost on your --

THE COURT: So group communications with the Government agencies --

UNIDENTIFIED SPEAKER: Docket 278?

THE COURT: 278 is granted. 277 is denied. Granted because it may bear on the credibility. Those are communications with respect to what Government agencies with respect to Mr. James. I think 280 --

UNIDENTIFIED SPEAKER: I apologize, your Honor. Did 279 -- you said E and I wasn't sure which one --

THE COURT: Not -- there's no 279.

UNIDENTIFIED SPEAKER: Fine.

THE COURT: So I'm -- what's left on this is 277 is denied; 278 is granted; 280 -- we'll get to 279 at the end because it's Cornerstone's discovery issues.

280; discovery requests to Cornerstone. I don't know how this is different than anything we talked about before. This is covered by what we've already done; right?

UNIDENTIFIED SPEAKER: Well, there are more -- some of the financial things in there.

THE COURT: Well -- but it really is encompassed within the missing Cornerstone financial documents; right?

UNIDENTIFIED SPEAKER: Not all of it, your Honor. These --

THE COURT: So what else was -- is there evidence that was not produced?

UNIDENTIFIED SPEAKER: Request for production number 49 and 50. We requested documents showing that instructions to the lay deposit checks and --

THE COURT: Instructions to what?

UNIDENTIFIED SPEAKER: To lay the depositing of checks. These go to those that Mr. James wasn't in complete control of the accounting practices.

THE COURT: Okay.

UNIDENTIFIED SPEAKER: Request for production number 56 and request for productions number 83, 84, 85, 86, and 89. And this --

THE COURT: What are those?

UNIDENTIFIED SPEAKER: These are requests for documents. We believe that perhaps these -- these are APAR documents that we've been requesting.

THE COURT: Okay.

UNIDENTIFIED SPEAKER: And then James' interrogatory number two documents --

THE COURT: Oh, we're not -- we're not to the -- oh, I see. Wait. No. That's not -- that's not docket 280. That's docket 281. All right.

UNIDENTIFIED SPEAKER: 280. I have it as 280. I have it as 280.

THE COURT: Interrogatories; the ones are listed in 281. Look at -- look at docket -- we want to be on the same page. Look at docket number 293. That's my -- what I'm going to. That's your -- that's -- as far as I'm concerned, anything that is included in 293 is waived because I asked you to update based upon what went on with Judge Seeborg.

So 280 is discovery requests to Cornerstone and those seem to me were document requests. And then in 281, you had all these interrogatories.

UNIDENTIFIED SPEAKER: You're right. These were because that's -- 280 was discovery to Cornerstone.

THE COURT: Oh, I see.

UNIDENTIFIED SPEAKER: And then 281 was discovery to Ms. Anderson.

THE COURT: Okay. All right.

So what's left on 281 now that you've gone through all their documents and figured it out?

UNIDENTIFIED SPEAKER: Again, everything has been produced as far as documents except for one thing; that is, the 49 and 50. And the argument made is that they need to discredit assertions that one of our experts, Mr. Levin has which is that Larry James had control over the financial practices.

However, since the letter was written, we've withdrawn Mr. Levin as an expert and agreed he would not testify so I don't think these are --

THE COURT: Okay.

UNIDENTIFIED SPEAKER: Your Honor, it's not simply Mr. Levin.

THE COURT: Forget it. Forget it. Don't worry about it. Produce those.

So I want you -- I'm going to -- with respect to the documents that are included in number 280, I'm going to deny it except I'm going to order you to produce documents responsive to document requests number 49 and 50.

UNIDENTIFIED SPEAKER: With respect to 280, your Honor, they agreed in the filing that they would supplement responsive interrogatory number two, but we have not yet received that.

THE COURT: Okay. So that -- you're going to supplement number two. You are also ordered to supplement number two.

UNIDENTIFIED SPEAKER: Correct.

THE COURT: Okay. Rog number two.

So with respect to Ms. Anderson, it seems to me that -- let's see. Cornerstone has agreed to supplement rogs 8 through 17; right?

UNIDENTIFIED SPEAKER: Or 281.

THE COURT: 281 on my reading.

UNIDENTIFIED SPEAKER: Yes. I'm sorry. Yes.

THE COURT: Cornerstone shall supplement interrogatories 8 through 17. James has withdrawn 6 and 7; that leaves 1 through 5.

UNIDENTIFIED SPEAKER: 1, 4 through 5, and -- actually, 1, 2, 3, 4, and 5.

THE COURT: 1, 2, 3, 4, 5. 1 through 5. Okay.

UNIDENTIFIED SPEAKER: And we assert that 1, 4 through 5 show Ms. Anderson's control of the accounting practices. And we believe numbers 2 and 3 respond to James' salary, which survives summary judgment.

THE COURT: Okay. And number five; what's five -- what is five ask for? I don't have the interrogatory in front of me.

UNIDENTIFIED SPEAKER: I apologize. This is a request for admission for -- dated from 2003 to 2012. You instructed Cornerstone to withhold deposit checks received in December until the following fiscal --

THE COURT: No, no, no. These are interrogatories.

UNIDENTIFIED SPEAKER: I have it. I can read it if you'd like.

THE COURT: Would you please interrogatory number five.

UNIDENTIFIED SPEAKER: Identify each financial transaction between Associated Health Professionals Inc, and Cornerstone from 2003 to the present.

THE COURT: Okay. Okay. These are all denied. You can issue produce -- the -- you should supplement 8 through 17; the rest are denied. Not relevant to the class and the things in the case.

Production of all documents. Let me see. Okay. Update me on where you are on this.

UNIDENTIFIED SPEAKER: Well, what they did, your Honor, were ordered these items produced.

THE COURT: Correct.

UNIDENTIFIED SPEAKER: And what they did was produce a whole new set of Bate stamps what we thought were supplemental. So we went through and found that that -- the privileged logs they produced were, again, completely messed up. They identified documents that weren't there. They say document -- they described documents that were redacted that weren't the documents described in the rog.

They've done another supplemental in, I think it was early March this year. And what they have left us with is instead of just producing the un-redacted versions of hundreds and hundreds of e-mails, they've produced an entirely new set in not the same order so that we have been having a lot of difficulty figuring out which document is it. Is it actually the new document and what -- excuse me -- the un-redacted document and which document is the completely new production.

They've -- it seems like an intentional effort to make it difficult to review these documents. And it -- we -- what we expected to get was an un-redacted version of the same Bate numbered document.

UNIDENTIFIED SPEAKER: Your Honor, what we did is supplement -- we -- there were a lot of problems with the log. That is correct.

Before the meet and confer I sent reviewed logs and revised production. At the meet and confer, he didn't provide me specific documents that he had trouble with. He did in the letter so I went through --

THE COURT: Okay.

UNIDENTIFIED SPEAKER: -- each of the documents he gave specifically identifies here -- and I have them with me -- that show that either they were produced or the log was corrected.

So, I mean, all I can do is tell you what he wrote here and I have answers to each one of these numbers here.

THE COURT: All right. Well, it says do that before you leave today --

UNIDENTIFIED SPEAKER: Okay.

THE COURT: -- with him.

So subject to the meet and confer of the parties on an explanation of the redaction logs, page 282 is denied.

279; I guess I don't understand what's left here. The -- let me just get it in front of me here. Okay. So what's left of this issue?

UNIDENTIFIED SPEAKER: Just the documents that were withheld in connection with Mr. Yaley (phonetic) and the other miscellaneous which I -- documents -- I guess were attachments to the various e-mails that would pertain to Mr. Yaley (phonetic).

THE COURT: So -- and the -- okay.

UNIDENTIFIED SPEAKER: And I guess for purposes of this, I can simplify it perhaps, your Honor?

THE COURT: Please.

UNIDENTIFIED SPEAKER: For all -- whatever your ruling is on the Yaley (phonetic) documents, we'll accept as -- my understanding is that the deploy, the second category, are attachments that were not put underneath the individual e-mail. Like, for example, it could be a Yaley (phonetic) e-mail number one and there would have been some attachments that would say deploy.

So whatever your ruling is on the Yaley (phonetic) documents, I'll accept, of course. If there was an attachment to that e-mail, then I'm fine with that.

THE COURT: Okay. So this is -- this is the scope of the -- whether or not there can be a privilege as to communications with Yaley (phonetic); is that -- that's this issue?

UNIDENTIFIED SPEAKER: Correct.

UNIDENTIFIED SPEAKER: That's correct, your Honor.

THE COURT: Okay. And the test is whether or not documents are germane to the subject matter on which an expert has offered an opinion; right?

UNIDENTIFIED SPEAKER: Correct.

UNIDENTIFIED SPEAKER: That, as well as 26 (4) -- (b)(4)(c). If these are communications with the -- an expert.

THE COURT: Well, they have to be communications with an expert. Yaley (phonetic) is an expert.

UNIDENTIFIED SPEAKER: Right. Those are privileged, though.

THE COURT: Well, no. Communications actually with an expert are not privileged if they're germane to the subject matter of their opinion; right?

UNIDENTIFIED SPEAKER: Well, if it's something they considered and relied upon, then it would not be privileged. But if it's just communications about the general subject matter; if it's -- if it's some sort of document that they created or that was given to them, then it would not be privileged, but the document would not be. I'm talking about an attach. But the communications with them about this, unless we're asking them to assume facts or something like that, then that would not be privileged.

THE COURT: That's ridiculous. I mean, there's no -- well, I don't understand what's left then. What are you saying is still privileged? You write to your expert and you -- on -- and it's in the area that he's testifying on.

UNIDENTIFIED SPEAKER: Well, Stoley (phonetic) is going to be an area that he testified.

THE COURT: Of course.

UNIDENTIFIED SPEAKER: Under 20 -- under communications with your expert are going to remain privileged under 26 (b)(4)(c) unless they're pertaining to assumptions we're asking him to make. There's a whole list of items.

THE COURT: That's not what the case law says.

UNIDENTIFIED SPEAKER: That's what the Federal Rules say.

THE COURT: No, it's not what the Federal Rules say. Show me.

UNIDENTIFIED SPEAKER: The -- I don't have the -- I'm referring to 26 (b)(4)(c), your Honor.

THE COURT: Okay. I'll look at it. I have it here. 26 (b)(4)(c). 26 (b)(4)(c).

(Whereupon there was a pause in the proceedings.)

THE COURT: 26 (a)(c) says -- 26 (b)(3)(a) and (b). 26 (b)(3)(a); (a) and (b); are trial preparation materials productions. Protect communications between parties' attorney and any witness required to court report under 26 (a)(b)(2). That's expert witnesses. (A)(2)(b); (a)(2)(b) is witnesses who must provide a written report and that's the -- of people who are retained or specially employed to provide expert testimony. That would be this person regardless of the form of the communication.

So they're protected as a work product or other except to the extent they relate to the compensation, identify facts, or data that the parties' attorney provided in that expert -- and that expert considered in forming the opinion to be expressed or identified assumptions that the parties' attorney provide any expert relied on.

So why are these documents any of those three?

UNIDENTIFIED SPEAKER: Well, it says prepare -- I don't have it in front of me. You said considered or prepared or something like that.

THE COURT: That the expert identify facts or data that the parties' attorney provided and at the expert considered in forming the opinions. Have you taken this expert's depo?

UNIDENTIFIED SPEAKER: No.

THE COURT: Really?

UNIDENTIFIED SPEAKER: They declined to take experts.

UNIDENTIFIED SPEAKER: We don't --

THE COURT: Wow. So how -- what evidence do you have that he considered any of these things?

UNIDENTIFIED SPEAKER: Well, counsel's own statement that is that anything that he relied on is related germane to the issues in the case.

THE COURT: I -- no, no. His statement is that it's on the subject matter of those opinions, yes.

UNIDENTIFIED SPEAKER: Correct. And that the standard articulated in Reyes is that the test in the Northern District is whether the documents reviewed or generated by the expert could reasonably be viewed as germane to the subject matter.

And counsel has agreed that anything they've talked about is germane to the subject matter. Now, we have to decide whether the documents were reviewed or generated by the expert. What we have here are e-mails to and from him. So clearly he reviewed those.

UNIDENTIFIED SPEAKER: Correction, your Honor.

THE COURT: Yes. So his -- so your theory is that under Reyes if you can show that the subject matter of the e-mails is on the subject matter of the testimony, it's a fair inference that it was considered by the expert in terms of their opinion and that's where Judge Briar read Reyes; right?

UNIDENTIFIED SPEAKER: And, your Honor, just to note; the Federal Rules were amended in 2010 to include these provisions here that I'm talking about.

THE COURT: Okay.

UNIDENTIFIED SPEAKER: So Reyes -- the analysis in Reyes is not entirely --

THE COURT: Well --
UNIDENTIFIED SPEAKER: -- applicable --
THE COURT: That's not --
UNIDENTIFIED SPEAKER: -- to the current rules.
THE COURT: Why not?
UNIDENTIFIED SPEAKER: Because --
THE COURT: It's got 26 (a)(2)(b).
UNIDENTIFIED SPEAKER: Yeah. They knew -- you have -- I don't know if you have the history, but the rules were amended to free up attorneys from having to work -- worry about all their communications with their experts, via e-mail or letter, were going to eventually disclose. They were in efforts to make expert -- the use of experts more efficient.
THE COURT: What's the date of the Reyes opinion?
UNIDENTIFIED SPEAKER: 2007.
UNIDENTIFIED SPEAKER: 2007.
THE COURT: Okay. And so I have got the 2010 amendments. 26 (a)(2)(b); (a)(2) -- we're talking about 4(c); right?
UNIDENTIFIED SPEAKER: Yes.
THE COURT: (A)(2) and (b)(4). This is (b)(4). This is (b)(4) are amended. (A)(2)(b); (a)(2)(b); (a)(2)(b)(4); (b)(4)(b); (b)(4)(c). We want (b)(4)(c) is (inaudible). Why isn't that right?
UNIDENTIFIED SPEAKER: I was not aware of that if

that's the case.

THE COURT: Okay.

UNIDENTIFIED SPEAKER: I can tell you that I did shepardize this case and found a case, I believe it was post-2010, that adopted the same rule. He didn't raise that argument in the papers.

THE COURT: I understand. I'm going -- I'll read to you what it says in the 2010 amendments. The commentary says (b)(4)(c) is added to provide work product protection for attorney-client -- attorney-expert communications regardless of the form of the communication or their oral or written or electronic or otherwise.

The addition of 26 (b)(4)(c) is designed to protect counsel's work product and ensure that lawyers may interact with retained experts without fear of exposing those communications to searching discovery.

Protection is limited to communications between expert witness required to provide a report as necessary and the attorney for the party have the witnesses testifying including preliminary experts opinions.

Protected communications include those between the parties' attorney and assistance of the expert.

(Whereupon there was a pause in the proceedings.)

THE COURT: So it's got to fall within the specialized exceptions now. Let's see.

(Whereupon there was a pause in the proceedings.)

THE COURT: Yeah. I mean, it has got -- it's now limited to communications that are on compensation or identify assumption or identify facts or data that the parties' attorney provided and the expert considered in forming the opinions to be expressed.

And why doesn't that answer the question here?

UNIDENTIFIED SPEAKER: Well, off the top of my head, I would say that some of these communications in the log are not involving the attorneys so I don't know how that would apply to those communications. But on -- again, I wasn't prepared for this because it wasn't briefed, but I know I --

UNIDENTIFIED SPEAKER: Incorrect, your Honor.

UNIDENTIFIED SPEAKER: I know I looked at this case when I shepardize it. I believe there was a recent case that applied the Reyes standard.

Now, from memory I can't recall exactly what it said, but I feel like -- I'm, you know, being put on the spot --

THE COURT: Okay.

UNIDENTIFIED SPEAKER: -- to talk about the case.

THE COURT: Yes. Well, that's what we do here.

UNIDENTIFIED SPEAKER: It was briefed on page four, your Honor.

THE COURT: No, no, no, I know. It's briefed -- specifically briefed in this case. So -- okay. Motion to number -- what docket number is this?

UNIDENTIFIED SPEAKER: 279.

THE COURT: 279 is denied.

Okay. So you guys are going to talk about that one cleanup on -- on the log?

UNIDENTIFIED SPEAKER: With Danis.

THE COURT: Yeah. And then we're done. All right.

UNIDENTIFIED SPEAKER: Your Honor, my -- I'd like to kind of, perhaps with some compassionate a little begging, have an opportunity to just to address one issue. I apologize for all the work that this case has caused you.

THE COURT: No, no. I don't -- you shouldn't apologize for the work. It's not the work that bothers me. I love this job. I love the work. What I don't like is when you squabble over trivia. So don't squabble over trivia. I'll give you 30 seconds to make your point.

UNIDENTIFIED SPEAKER: Okay. We're not squabbling over trivia. We have page after page of charts where one of the things that I think that you're frustrated with payments to Monster.com or Go Daddy or something like that.

Why do you want all these source documents? Because there are listed as damages they're seeking out of Mr. James for mismanagement of the company.

Often times very particularized. We want those source documents to say what the memo says about who was paid for and why.

THE COURT: Okay. Well, then his response is they were all produced.

UNIDENTIFIED SPEAKER: Okay. Then I think that is a good frame-up of the issue. I didn't want you to think this was a purposeful trivia campaign.

THE COURT: I'm not going to deny on the basis of its being trivial; I'm denying on the basis that there's no evidence that hasn't been produced.

UNIDENTIFIED SPEAKER: That was the understanding I was thinking. Thank you.

THE COURT: Okay. Great. Thank you.

UNIDENTIFIED SPEAKER: Thank you.

UNIDENTIFIED SPEAKER: Thank you. Have a good evening.

THE CLERK: Court's now in recess.

(Proceedings concluded at 5:10 p.m.)

CERTIFICATE OF REPORTER

I certify that the foregoing is a true and correct transcript, to the best of my ability, of the pages of the official electronic sound recording provided to me by the U.S. District Court, Northern District of California, of the proceedings taken on the date and time previously stated in the above matter.

I further certify that I am neither counsel for, related to, nor employed by any of the parties to the action in which this hearing was taken; and, further, that I am not financially nor otherwise interested in the outcome of the action.

Carrie McKee-Parks ______________________________ DATE 5-7-14

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